

## SECOND DIVISION

[ G.R. NO. 164938, August 22, 2005 ]

**VICTOR C. AGUSTIN, PETITIONER, VS. HON. FERNANDO VIL PAMINTUAN, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF BAGUIO CITY, BRANCH 3; ANTHONY DE LEON AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

Before the Court is a petition for review on *certiorari* of the Court of Appeals' (CA) Decision<sup>[1]</sup> in CA-G.R. SP No. 70629 dismissing the petition for *certiorari* and prohibition filed by petitioner Victor C. Agustin which, in turn, assailed the Order of the Regional Trial Court (RTC) of Baguio City, Branch 3, denying the motion to quash the Informations in Criminal Case Nos. 17892-R to 17895-R, for libel.

On June 13, 2000, the Office of the City Prosecutor of Baguio City, filed four separate Informations<sup>[2]</sup> charging the petitioner, a Philippine Daily Inquirer columnist, with libel. The inculpatory portion of that in Criminal Case No. 17892-R is quoted *infra*, as follows:

That on or about the 17<sup>th</sup> day of March 2000, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent and malicious intent and evil motive of attacking, injuring and impeaching the character, honesty, integrity, virtue and reputation of one Anthony De Leon the acting general manager of the Baguio Country Club, and as a private citizen of good standing and reputation in the community and with malicious intent of exposing the (*sic*) Anthony De Leon to public hatred, contempt, ridicule, discredit and dishonor, without any justifiable motive, did then and there willfully, maliciously and criminally prepare or cause to prepare, write in his column "Cocktails" and publish in the Philippine Daily Inquirer, a newspaper of general circulation in the City of Baguio and in the entire Philippines, wherein in said column the said accused did then and there defame the complainant Anthony De Leon by branding and imputing upon him the following defamatory and libelous statements, to wit:

*"The trysting place between the President Marcos and Hollywood actress Dovie Beams is not the subject of a high level tax evasion investigation ordered by no less than the new BIR Commissioner, Dakila Fonacier.*

*That bungalow on Northwestern Street had hastily changed hands in the last two years, and had supposedly been sold to, first Anthony De Leon, the acting general manager of the*

*exclusive Baguio Country Club, who in turn disposed of it to an unwitting Chinoy couple.*

*According to preliminary BIR findings, the transfer to Mr. De Leon is already spurious since the cook De Leon had been missing and had gone "TNT" in New York more than eight years ago. The spurious sale to the male De Leon who is not related to the cook, was necessary to make it appear that it had been an intra-family transfer.*

*Second, the Baguio Country Club manager made it appear that he and his family had been using the house himself, but the BIR had now gotten a certification from the Greenhills homeowners' association that the said bungalow has all these years been rented to third parties, the last of which was an ADB executive.*

*The most damaging of the findings was the supposed transfer price of the bungalow between the De Leons and how much the bungalow was later palmed off to the Chinese-Filipino couple.*

*We will leave those details for the BIR Commissioner to announce himself, that, if he could overcome the tremendous and well-oiled lobbying efforts by De Leon's principals.*

*Tip: One of the principals is a lawyer and self-proclaimed best friend of Lenny "Dragon Lady" de Jesus."*

which aforesaid defamatory, malicious and libelous words and statements have been read by the personnel of the Baguio Country Club, by the residents of the City of Baguio, and by the public in the other parts of the country, and that those libelous and defamatory words and statements aforementioned are untrue, false and malicious tending to impeach the character, integrity, virtue and reputation of the said Anthony De Leon as Acting General Manager of the Baguio Country Club, thus, placing and causing said Anthony De Leon to public hatred, contempt, dishonor, discredit and ridicule which acts are serious and insulting in nature, to the damage and prejudice of the said Anthony De Leon.<sup>[3]</sup>

Except for the alleged libelous articles, as well as the dates of the commission of the crimes charged therein, the three other Informations are similarly worded.

Agustin was arraigned on September 10, 2001, and pleaded not guilty to all the charges.<sup>[4]</sup>

Agustin then filed a Motion to Quash the Informations, on the sole ground that the court had no jurisdiction over the offenses charged. He pointed out that the said Informations did not contain any allegation that the offended party, Anthony de Leon, was actually residing in Baguio City, or that the alleged libelous articles were printed and first published in a newspaper of general circulation in Baguio City.

Private complainant De Leon, through counsel, opposed the motion, alleging that he was a *bona fide* resident of the Baguio Country Club located at the Country Club Road, Baguio City; he was also the acting general manager of the club at the time the alleged libelous article was published. He emphasized that the Informations alleged that he was of good standing and reputation in the community, and that the word "community" meant Baguio City, where he was residing. Moreover, Agustin was estopped from assailing the court's lack of jurisdiction since he was arraigned before he filed his motion to quash the Information. Even if it may be assumed that there was some ambiguity in the Informations as to whether he was an actual resident of Baguio City, amending them would suffice; based on the entirety of the context and applying the doctrine of necessary implication, there can be no other conclusion than that he was a resident of Baguio City.

By way of Reply, Agustin averred that the allegations in the Informations (that the private complainant was the acting general manager of the Baguio Country Club and was a private citizen of good standing and reputation in the community) do not constitute an allegation that the private complainant was an actual resident of Baguio City. He insisted that to construe the word "community" in the Informations to mean the community in Baguio City would be to unduly strain the limits of a fair interpretation; there must be clear and positive allegations in the Informations that the private complainant actually resided in Baguio City. He argued that he was not estopped from assailing the court's jurisdiction over the crimes charged even after his arraignment because lack of jurisdiction is a matter which can be dealt with at any time.

On January 16, 2002, the trial court issued an Order<sup>[5]</sup> denying the motion to quash, holding that in the light of the petitioner's admission that the private complainant was the General Manager of the Baguio Country Club, "it was reasonable to infer therefrom that the private complainant was actually a resident of Baguio City at the time the alleged libelous articles were published."

Agustin filed a motion for reconsideration of the Order, insisting that the mere fact that the private complainant was the General Manager of the Baguio Country Club did not necessarily mean that the latter was actually residing in Baguio City, as it was also possible that he was actually residing in a place nearby. The trial court, however, denied the motion on April 1, 2002.

Agustin forthwith filed a Petition for *Certiorari* and Prohibition with a plea for an injunctive relief before the Court of Appeals (CA), claiming that the trial court committed a grave abuse of discretion amounting to lack or excess of jurisdiction in denying his Motion to Quash.

On February 24, 2004, the CA rendered a decision dismissing the petition. It disagreed with Agustin, and held that the trial court did not commit a grave abuse of discretion amounting to excess or lack of jurisdiction in so ruling. According to the CA, while the Informations filed by the prosecution did not contain allegations that the complainant was actually a resident of Baguio City at the time the alleged libelous articles were printed and first published, and that the alleged libelous articles were printed and first published in Baguio City, such defects were merely of form and not of substance. Thus, there is no need to quash the Informations, as they may merely be amended pursuant to Section 14, Rule 110 of the Revised Rules of Criminal Procedure, which provides that "an amendment, either of form or

substance, may be made at any time before the accused enters a plea to the charge, and thereafter, as to all matters of form with leave of court."<sup>[6]</sup> The CA further ruled that any amendment that would be made to conform to the private complainant's residency requirements would not place the accused at a disadvantage.

Agustin filed a motion for reconsideration of the decision, which the appellate court denied for lack of merit.<sup>[7]</sup>

Agustin, now the petitioner, insists that the CA erred in dismissing his petition for *certiorari* and prohibition, it appearing that the trial court committed a grave abuse of its discretion in denying his Motion to Quash the Informations, as well as his motion for reconsideration of the trial court's order denying the same.

The petitioner maintains that in the absence of any allegations in the Informations that the private respondent was actually residing in Baguio City, or that the alleged libelous articles were printed and first published in Baguio City as mandated by Article 360 of the Revised Penal Code, the trial court had no jurisdiction over the offenses charged. He asserts that the amendments of the Informations would likewise be improper, considering that the defects of the Informations were not merely of form but of substance. The petitioner posits that venue in criminal cases is jurisdictional and mandatory; hence, conformably with the decisions of the *Court in Lopez v. City Judge*,<sup>[8]</sup> and *Agbayani v. Sayo*,<sup>[9]</sup> the Informations must be quashed.

In its Comment on the petition, the Office of the Solicitor General (OSG) maintains that the failure of the Informations to allege that the private respondent is a resident of Baguio City (where the Informations were filed) is not a jurisdictional defect. It asserts that the averment in the Informations that the crimes charged were committed within the jurisdiction of the trial court in Baguio City, taken in conjunction with the other allegations therein, are sufficient to vest jurisdiction over the subject cases in the RTC of Baguio City.

For his part, the private complainant reiterated his arguments in the RTC and in the CA in his Comment on the Petition.

The threshold issues in the present petition are (1) whether or not the RTC of Baguio City has jurisdiction over the offenses charged in the four Informations on the premise that the Informations are defective; and (2) whether the Informations may be amended to cure the said defects.

The petition is meritorious.

Venue in criminal cases is an essential element of jurisdiction.<sup>[10]</sup> The jurisdiction of a court over the criminal case is determined by the allegations in the complaint or Information, and the offense must have been committed or any one of its essential ingredients took place within the territorial jurisdiction of the court.<sup>[11]</sup>

Article 360 of the Revised Penal Code provides -

ART. 360. *Persons responsible*.- Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by